

MEMO ENDORSED



ROTHWELL FIGG

901 New York Avenue, N.W.
Suite 900 East
Washington, DC 20001

Telephone (202) 783-6040
Facsimile (202) 783-6031
www.rothwellfigg.com
info@rothwellfigg.com

Offices in Washington, D.C. | New York | Boston

May 7, 2025

VIA ECF

Hon. Sidney H. Stein
United States Magistrate Judge
500 Pearl Street
New York, NY 10007

E. Anthony Figg
George R. Repper
Steven Lieberman
Joseph A. Hynds
Martin M. Zoltick
R. Danny Huntington
Joo Mee Kim
Brian S. Rosenbloom
Jennifer P. Nock
Brett A. Postal
Aydin H. Harston, Ph.D.
Richard Wydeven
Sharon L. Davis
Robert P. Parker
Jenny L. Colgate
Leo M. Loughlin
Michael V. Battaglia
Michael H. Jones
Rachel M. Echols
Daniel L. Shores

*Not a member of the D.C.
Bar. Practice limited to patent,
trademark and copyright matters
and cases in federal courts.

G. Franklin Rothwell
(1928-2011)
Harry F. Manbeck, Jr.
(1926-2025)

Jennifer B. Maisel
Jess M. Collen
Jeffrey A. Lindenbaum*
Mark T. Rawls
Nicole M. DeAbrantes
Davide F. Schiavetti
Vivian Y. Tian
Kristen J. Logan
Sheena X. Wang
Gary J. Prato
James T. Pawlowski
Bryan B. Thompson
Melissa C. Santos, Ph.D.
Andrew C. Stewart
Adam M. Nicolais
Gregory S. DeLassus
Michael P. Ellenberger
Mary L. Mullins*
Michael A. Saunders
Stephanie E. Waltersdorff

Of Counsel
Jane F. Collen
James R. Hastings*
Mitchell E. Radin*

Re: ***Request for Permission to File Supplemental Letter Regarding News Plaintiffs' Motion to Compel OpenAI to Identify the Output Logs it Has Destroyed***
In Re: OpenAI, Inc., Copyright Infringement Litigation, No. 1:25-md-3143, This Document Relates To: *The New York Times Company v. Microsoft Corporation, et al.*, No. 1:23-cv-11195

Dear Judge Stein:

We write on behalf of Plaintiffs The New York Times Company ("The Times"), Daily News, LP, *et al.* (the "Daily News Plaintiffs"), and the Center for Investigative Reporting (collectively, the "News Plaintiffs") to seek permission to file a Supplemental Letter to Magistrate Judge Wang regarding News Plaintiffs' pending Motion to Compel OpenAI to identify the output logs it has destroyed since The Times filed its Original Complaint on December 27, 2023.¹ The proposed Supplemental Letter is attached hereto as Exhibit 1.

On April 30, 2025, this Court issued Case Management Order No. 1, which directs that, "[u]ntil the parties reach an agreement on a preservation plan for all actions or the Court orders otherwise, each party shall take reasonable steps to preserve all evidence that may be relevant to this litigation." Dkt. 14 at 4. The Court also included the following footnote to that statement: "If there is currently a dispute about the scope or degree of preservation of output log data, the parties should identify the dispute in the Report. This Order does not resolve or address any such dispute." *Id.* at 4, n. 1.

Despite numerous meet and confer efforts, News Plaintiffs and OpenAI have an ongoing dispute about the scope or degree of OpenAI's preservation of output log data. News Plaintiffs respectfully submit that the Supplemental Letter, which includes information News Plaintiffs have

¹ The motion is pending at *The Times*, Case No. 23-cv-11195, Dkt. 483, which in turn relates to News Plaintiffs' prior motion to compel at Dkt. 379



ROTHWELL FIGG

May 7, 2025

Page 2

received to-date regarding OpenAI's preservation and destruction of "user conversation" data for at least ChatGPT Free, Plus, and Pro, will assist the Court in understanding the nature of the dispute.

Moreover, News Plaintiffs seek permission to file the Supplemental Letter separately from the forthcoming report from all plaintiffs and defendants in the MDL docket in accord with proposed new Rule 16.1 because OpenAI has designated portions of Exhibit 1 and the attachments thereto as Protected Discovery Material under the Protective Order governing just the consolidated News cases. OpenAI has taken the position that such materials are not to be shared outside those cases. Although News Plaintiffs do not affirmatively seek to seal any material, News Plaintiffs are provisionally requesting that portions of Exhibit 1 and the attachments thereto be filed under seal because those portions discuss documents and information that OpenAI has designated as Protected Discovery Material under the Protective Order.

May 7, 2025

Respectfully submitted,

/s/Steven Lieberman

Steven Lieberman

Rothwell, Figg, Ernst & Manbeck, P.C.

/s/Ian B. Crosby

Ian B. Crosby

Susman Godfrey L.L.P.

/s/Matt Topic

Matt Topic

Loevy & Loevy

cc: All Counsel of Record (via ECF)

Application GRANTED. Plaintiffs may file their supplemental letter to Judge Wang on the docket. Any sealing motions related to plaintiffs' letter should be addressed to Judge Wang.

Dated: May 9, 2025

New York, New York

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Sidney H. Stein', written over a horizontal line.

Sidney H. Stein, U.S.D.J.